



8011-01

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80752; File Nos. SR-NYSE-2017-13; SR-NYSEArca-2017-29; SR-NYSEMKT-2017-17; SR-NYSENAT-2017-01)

May 24, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; NYSE National, Inc.; Order Approving Proposed Rule Changes to Amend the Certificate and Bylaws of Their Ultimate Parent Company, Intercontinental Exchange, Inc.

I. Introduction

On March 28, 2017, the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE MKT”) and NYSE National, Inc. (“NYSE National,” and together with NYSE, NYSE Arca and NYSE MKT, “the Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule changes to amend the Third Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. (the “ICE Certificate”) and Seventh Amended and Restated Bylaws of Intercontinental Exchange, Inc. (the “ICE Bylaws”) of the exchanges’ ultimate parent company, Intercontinental Exchange, Inc. (“ICE”). On April 6, 2017, each Exchange filed Amendment No. 1 to its proposed rule change.³ The proposed rule changes, as modified by Amendment No. 1, were published for comment in the Federal Register on April 14, 2017.⁴ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified that the word “indirect” is proposed to be deleted from clause (iii)(y) of the first sentence of Section 2.13(b) of the ICE Bylaws.

⁴ See Securities Exchange Act Release Nos. 80420 (April 10, 2017), 82 FR 18038 (April 14, 2017) (“NYSE Notice”); 80418 (April 10, 2017), 82 FR 18031 (April 14, 2017) (“NYSE Arca Notice”); 80419 (April 10, 2017), 82 FR 18051 (April 14, 2017) (“NYSE

received no comments in response to the proposed rule changes. This order approves the proposed rule changes.

II. Description of the Proposed Rule Changes

The Exchanges propose to amend the ICE Certificate and/or the ICE Bylaws to (1) revise references to ICE subsidiaries that either are or control national securities exchanges and delete references to certain other subsidiaries of ICE; (2) adopt a definition of “Member”; (3) delete obsolete references and make certain technical corrections to the ICE Certificate and/or ICE Bylaws; and (4) clarify ICE Bylaw provisions relating to the location of stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE’s stockholders.⁵

References to ICE Subsidiaries

The Exchanges propose to amend the limitations on voting and ownership in Article V of the ICE Certificate to update and streamline references to ICE subsidiaries that are national securities exchanges or that control national securities exchanges, as well as to delete references to certain other ICE subsidiaries.⁶ Specifically, Article V of the ICE Certificate establishes voting and ownership concentration limitations above a specified threshold by “Persons” and their “Related Persons,” as defined in Article V of the ICE Certificate, for so long as ICE owns

MKT Notice”); and 80417 (April 10, 2017), 82 FR 18061 (April 14, 2017) (“NYSE National Notice”).

⁵ ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc. (“ICE Holdings”), which in turn owns 100% of the equity interest in NYSE Holdings LLC (“NYSE Holdings”). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc. (“NYSE Group”), which in turn directly owns 100% of the equity interest of NYSE, NYSE Arca, NYSE MKT and NYSE National.

⁶ See NYSE Notice, supra note 4 at 18038-40; NYSE Arca Notice, supra note 4 at 18032-34; NYSE MKT Notice, supra note 4 at 18052-54; and NYSE National Notice, supra note 4 at 18062-64.

any “U.S. Regulated Subsidiary.” Article V of the ICE Certificate authorizes ICE’s Board of Directors to grant exceptions to the voting and ownership concentration limitations if the Board of Directors makes certain determinations, including that such an exception would not impair the ability of ICE, the “U.S. Regulated Subsidiaries,” ICE Holdings, NYSE Holdings, and NYSE Group to perform their respective responsibilities under the Exchange Act and the rules and regulations thereunder, and that such an exception is otherwise in the best interests of ICE, its stockholders and the U.S. Regulated Subsidiaries.⁷

The Exchanges represent that “U.S. Regulated Subsidiaries” is defined in the ICE Bylaws to mean the four national securities exchanges owned by ICE (i.e., NYSE, NYSE Arca, NYSE MKT, and NYSE National), NYSE Arca, LLC, and NYSE Arca Equities, Inc. (“NYSE Arca Equities”), or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by ICE.⁸ The Exchanges note that NYSE Arca, LLC, is a subsidiary of NYSE Group, and NYSE Arca Equities is a subsidiary of NYSE Arca.

The Exchanges propose to amend Article V to replace references to “U.S. Regulated Subsidiary” or “U.S. Regulated Subsidiaries” with references to “Exchange” or “Exchanges.”⁹ An “Exchange” would be defined as a “national securities exchange registered under Section 6 of the Exchange Act¹⁰ that is directly or indirectly controlled by [ICE].”¹¹ Accordingly, the

⁷ The Exchanges also propose to amend Article V of the ICE Certificate to replace references to ICE Holdings, NYSE Holdings, and NYSE Group with the defined term “Intermediate Holding Companies.”

⁸ ICE Certificate, Article V, Section A.10; ICE Bylaws, Article III, Section 3.15.

⁹ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18032; NYSE MKT Notice, supra note 4 at 18052; and NYSE National Notice, supra note 4 at 18062.

¹⁰ 15 U.S.C. 78f.

Exchanges note that Article V of the ICE Certificate no longer would include references to NYSE Arca, LLC or NYSE Arca Equities.¹² The Exchanges believe, however, that omitting such entities is appropriate because the Exchange Act definition of “exchange” states that “exchange” “includes the market place and the market facilities maintained by such exchange.”¹³ In addition, the Exchanges note that NYSE Arca, as the national securities exchange, has the regulatory and self-regulatory responsibility for the NYSE Arca options and equities markets.¹⁴ The Exchanges represent that the proposed change to incorporate the term “Exchange” would align Article V of the ICE Certificate with the voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which do not include references to subsidiaries other than national securities exchanges.¹⁵

Clause (B) of Article X of the ICE Certificate requires that, so long as ICE controls any of the “U.S. Regulated Subsidiaries,” any proposed amendment or repeal of any provision of the ICE Certificate must be submitted to the boards of directors of “New York Stock Exchange, NYSE Market, NYSE Regulation, Inc., NYSE Arca, NYSE Arca Equities, and NYSE MKT” for

¹¹ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18032; NYSE MKT Notice, supra note 4 at 18052; and NYSE National Notice, supra note 4 at 18062.

¹² Id.

¹³ 15 U.S.C. 78c(a)(1).

¹⁴ See NYSE Arca Equities Rule 3.4 (“The NYSE Arca, Inc. (‘NYSE Arca Parent’), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, NYSE Arca Equities, Inc. (‘Corporation’).”). See also NYSE Arca Equities Rule 14.1.

¹⁵ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18032-33; NYSE MKT Notice, supra note 4 at 18052-53; and NYSE National Notice, supra note 4 at 18062.

a determination as to whether such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated.¹⁶ For the same reasons discussed above, the Exchanges propose to replace the term “U.S. Regulated Subsidiaries” and the references to “New York Stock Exchange, NYSE Market, NYSE Regulation, Inc., NYSE Arca, NYSE Arca Equities, and NYSE MKT” in Clause (B) of Article X of the ICE Certificate with “Exchange” and “each Exchange,” respectively.

The Exchanges also propose to amend provisions of Articles III, VII, VIII, IX and XI of the ICE Bylaws in a manner consistent with certain proposed changes to the ICE Certificate. In Section 3.14(a) of Article III of the ICE Bylaws, the Exchanges propose to replace references to “U.S. Regulated Subsidiaries” with “Exchanges” and to replace references to NYSE Group, NYSE Holdings, and ICE Holdings with “Intermediate Holding Companies.” The Exchanges propose to replace the term “U.S. Regulated Subsidiaries” with “Exchange” in Articles VII, VIII, IX and XI of the ICE Bylaws. The Exchanges propose to define the term “Exchange” in Section 3.15 of Article III of the ICE Bylaws as “a national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by [ICE].” The definition of “Exchange” that would be added to the ICE Bylaws comports with the definition of “Exchange” that would be added to the ICE Certificate.¹⁷

The Exchanges propose to amend Section 8.3(b) of Article VIII of the ICE Bylaws to replace “U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S.

¹⁶ 15 U.S.C. 78s.

¹⁷ See text accompanying note 11, supra.

Regulated Subsidiary has regulatory authority or oversight” with “Exchange.”¹⁸ The Exchanges note that the proposed change would remove the current provision that allows any “U.S. Regulated Subsidiary” to inspect the books and records of another “U.S. Regulated Subsidiary over which the first-noted “U.S. Regulatory Subsidiary” “has regulatory authority or oversight.”¹⁹ As a result, the Exchanges represent that the ICE Bylaws no longer would provide that NYSE Arca may inspect the books and records of NYSE Arca Equities or NYSE Arca, LLC.²⁰ However, the Exchanges represent that the proposed change would have no substantive effect, because NYSE Arca would retain its authority to inspect the books and records of NYSE Arca Equities and NYSE Arca, LLC pursuant to NYSE Arca Equities Rules 14.1 and 14.3.²¹ The Exchanges also note, in connection with this proposed amendment, that the NYSE, NYSE MKT, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other.²²

Definition of “Member”

¹⁸ See NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18034-35; NYSE MKT Notice, supra note 4 at 18054-55; and NYSE National Notice, supra note 4 at 18064.

¹⁹ See NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18064.

²⁰ Id.

²¹ Id. See also NYSE Arca Equities Rule 14.1(b), which provides, among other things, that the books and records of NYSE Arca Equities are subject to the oversight of the NYSE Arca pursuant to the Act, and that the books and records of NYSE Arca Equities shall be subject at all times to inspection and copying by NYSE Arca. NYSE Arca Equities Rule 14.3(a) provides, among other things, that the books and records of NYSE Arca, LLC are deemed to be the books and records of NYSE Arca and NYSE Arca Equities for purposes of and subject to oversight pursuant to the Exchange Act.

²² See NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18064.

The Exchanges propose to add as Section A.8., Article V of the ICE Certificate a new term, “Member,” which would be defined as “ a Person that is a ‘member’ of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.”²³ The Exchanges note that Section A.3., Article V of the ICE Certificate currently includes provisions setting forth the different categories of members and permit holders of NYSE, NYSE Arca, NYSE Arca Equities, and NYSE MKT, respectively.²⁴ The Exchanges believe that using “Member” in place of specifying the categories of members and permit holders would simplify the provisions in the ICE Certificate and avoid exchange-by-exchange descriptions, without making a substantive change.²⁵ The Exchanges represent that each of the categories listed—an ETP Holder of NYSE Arca Equities (as defined in the NYSE Arca Equities rules of NYSE Arca); an OTP Holder or OTP Firm of NYSE Arca (each as defined in the rules of NYSE Arca); a “member” or “member organization” of NYSE (as defined in the rules of the NYSE) and NYSE MKT—is a “member” of an exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.²⁶ As a result of the proposed change, Sections A.3.(c)(ii) and (d)(ii), Article V of the ICE Certificate would require, in the case of a person seeking approval to exercise voting rights in excess of 20% of the outstanding votes, that neither such person nor any of its Related Persons²⁷ is a Member of any

²³ 15 U.S.C. 78(c)(a)(3)(A).

²⁴ See ICE Certificate, Article V, Section A.3.(c)(ii) and (d)(ii) and Section A.9. See also NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18033; NYSE MKT Notice, supra note 4 at 18053; and NYSE National Notice, supra note 4 at 18062.

²⁵ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18033; NYSE MKT Notice, supra note 4 at 18053; and NYSE National Notice, supra note 4 at 18062.

²⁶ Id.

²⁷ The term “Related Persons” would be defined in Section A.10., Article V of the amended ICE Certificate.

Exchange, instead of referring to the different categories of membership recognized by each Exchange.²⁸ Similarly, the conditions relating to a person seeking approval to exceed the ownership concentration limitation in Section B.3.(d), Article V of the ICE Certificate would be rephrased in the same manner. The Exchanges represent that use of “Member” would permit a simplification, without substantive change, of the portion of the definition of the term “Related Persons” relating to members and trading permit holders.²⁹ The Exchanges also state that the use of “Member” would be appropriate because it would align the provisions of the ICE Certificate with the voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges and that use a similar description of membership.³⁰

Obsolete References and Technical Corrections

The Exchanges propose to amend Clause (A) of Article X of the ICE Certificate, which requires the vote of 80% of all outstanding shares entitled to vote in order to reduce the voting requirement set forth in Section 11.2(b) of the ICE Bylaws. The Exchanges note that Section 11.2(b) of the ICE Bylaws was deleted in 2015 after the sale by ICE of the Euronext business.³¹ Accordingly, the Exchanges propose to delete the requirement.

²⁸ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18033; NYSE MKT Notice, supra note 4 at 18053; and NYSE National Notice, supra note 4 at 18062.

²⁹ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18033; NYSE MKT Notice, supra note 4 at 18053; and NYSE National Notice, supra note 4 at 18062-63.

³⁰ See NYSE Notice, supra note 4 at 18039; NYSE Arca Notice, supra note 4 at 18033; NYSE MKT Notice, supra note 4 at 18053; and NYSE National Notice, supra note 4 at 18063.

³¹ See Securities Exchange Act Release No. 74928 (May 12, 2015), 80 FR 28331 (May 18, 2015) (SR-NYSE-2015-18). See also NYSE Notice, supra note 4 at 18040; NYSE Arca

The ICE Certificate also includes references to NYSE Market (DE), Inc., defined as “NYSE Market,” and NYSE Regulation, Inc. (“NYSE Regulation”). The Exchanges represent that NYSE Market and NYSE Regulation were previously parties to a Delegation Agreement whereby the NYSE delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market, but that the Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions.³² As a result, the Exchanges represent that the two entities ceased being regulated subsidiaries, and NYSE Regulation was subsequently merged out of existence.³³ Therefore, the Exchanges propose to delete all references to NYSE Market and NYSE Regulation from the ICE Certificate.³⁴

The Exchanges also state that Article XII of the ICE Bylaws was added in connection with the acquisition of NYSE National, previously National Stock Exchange, Inc., in 2016.³⁵ The Exchanges propose to delete Article XII of the ICE Bylaws in its entirety because they represent that the substance of Article XII would be addressed by various proposed amendments

Notice, supra note 4 at 18034; NYSE MKT Notice, supra note 4 at 18054; and NYSE National Notice, supra note 4 at 18063.

³² See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27). See also NYSE Notice, supra note 4 at 18040; NYSE Arca Notice, supra note 4 at 18034; NYSE MKT Notice, supra note 4 at 18054; and NYSE National Notice, supra note 4 at 18063-64.

³³ See NYSE Notice, supra note 4 at 18040; NYSE Arca Notice, supra note 4 at 18034; NYSE MKT Notice, supra note 4 at 18054; and NYSE National Notice, supra note 4 at 18064.

³⁴ Id.

³⁵ See Securities Exchange Act Releases Nos. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16); and 79901 (January 30, 2017), 82 FR 9251 (February 3, 2017) (SR-NYSE-2016-90, SR-NYSEArca-2016-167, SR-NYSEMKT-2016-122). See also NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18064.

to the ICE Certificate. As a result, the Exchanges note that Article XII of the ICE Bylaws no longer would be necessary.³⁶

The Exchanges further note that the ICE Bylaws refer to a “Vice Chairman of the Board.”³⁷ The Exchanges represent that the Board of Directors of ICE has not had a Vice Chairman since the sale of the Euronext business in 2014.³⁸ Accordingly, in Sections 2.9, 3.6(b) and 3.8 of the ICE Bylaws, the Exchanges propose to replace “Vice Chairman of the Board” with “lead independent director.” As a result, the lead independent director would preside over meetings of stockholders in the absence of the Chairman of the Board (Section 2.9); would have the authority to call a special meeting of the Board of Directors (Section 3.6(b)); and would preside over meetings of the Board of Directors in the absence of the Chairman of the Board (Section 3.8).³⁹

The Exchanges note that Section 3.14 of the ICE Bylaws sets forth considerations directors must take into account in discharging their responsibilities as members of ICE’s Board of Directors.⁴⁰ The Exchanges propose to amend the last sentence of Section 3.14(c), which limits claims against directors, officers and employees of ICE and against ICE.⁴¹ The revised

³⁶ See NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18064.

³⁷ See NYSE Notice, supra note 4 at 18042; NYSE Arca Notice, supra note 4 at 18036; NYSE MKT Notice, supra note 4 at 18056; and NYSE National Notice, supra note 4 at 18065.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ See NYSE Notice, supra note 4 at 18042; NYSE Arca Notice, supra note 4 at 18036; NYSE MKT Notice, supra note 4 at 18056; and NYSE National Notice, supra note 4 at 18065-66.

text would be expanded in scope to apply to any “past or present stockholder, employee, beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity,” and to protect agents of ICE as well as directors, officers and employees. The Exchanges represent that these changes would conform the provision to similar provisions in the governing documents of other holding companies of national securities exchanges.⁴²

The Exchanges also propose that a reference to “Article II of these Bylaws” in Section 3.12 of the ICE Bylaws relating to the conduct of meetings of committees of the Board of Directors of ICE be corrected to read “this Article III of these Bylaws.”⁴³ Finally, the Exchanges note that conforming changes would be made to the title and date of the ICE Bylaws.⁴⁴

Meetings of Stockholders

The Exchanges also propose to amend several sections of Article II (Meetings of Stockholders) of the ICE Bylaws.⁴⁵ Specifically, the Exchanges propose to simplify Section 2.1 of the ICE Bylaws, which relates to the location of stockholder meetings.⁴⁶ The Exchanges represent that the revised provision would provide that the location, if any, as well as the

⁴² See NYSE Notice, supra note 4 at 18042; NYSE Arca Notice, supra note 4 at 18036; NYSE MKT Notice, supra note 4 at 18056; and NYSE National Notice, supra note 4 at 18066.

⁴³ Id.

⁴⁴ Id.

⁴⁵ See NYSE Notice, supra note 4 at 18041-42; NYSE Arca Notice, supra note 4 at 18035-36; NYSE MKT Notice, supra note 4 at 18055-56; and NYSE National Notice, supra note 4 at 18064-65.

⁴⁶ See NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18064.

decision to hold a stockholder meeting solely by remote communication, would be determined by the Board of Directors and stated in the notice of meeting.⁴⁷

The Exchanges further propose to amend Section 2.7 of the ICE Bylaws, which relates to the quorum for stockholder meetings.⁴⁸ The Exchanges propose to conform the quorum requirements in the ICE Bylaws to those in the ICE Certificate by amending this provision to refer to Section B of Article IX of the ICE Certificate, which sets forth the quorum requirements for meetings of the stockholders.⁴⁹

The Exchanges also propose to amend Section 2.13(b) of the ICE Bylaws, which sets forth the advance notice requirements for stockholder proposals, to simplify certain provisions of the Bylaws by using the term “Nominee Holder” where appropriate.⁵⁰ The Exchanges also propose to add a new defined term, “Proponent,” to capture both stockholders and Nominee Holders who bring matters before the annual meeting of stockholders, and to amend the ICE Bylaws to use the term “Proponent” where appropriate.⁵¹ Finally, the Exchanges propose to make several clarifying revisions to Section 2.13(b) of the ICE Bylaws.

III. Discussion and Commission Findings

⁴⁷ See NYSE Notice, supra note 4 at 18041; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18065.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ See NYSE Notice, supra note 4 at 18041-42; NYSE Arca Notice, supra note 4 at 18035; NYSE MKT Notice, supra note 4 at 18055; and NYSE National Notice, supra note 4 at 18065.

⁵¹ See NYSE Notice, supra note 4 at 18042; NYSE Arca Notice, supra note 4 at 18035-36; NYSE MKT Notice, supra note 4 at 18055-56; and NYSE National Notice, supra note 4 at 18065.

Section 19(b) of the Act and Rule 19b-4 thereunder requires a self-regulatory organization (“SRO”) to file proposed rule changes with the Commission. Although ICE is not a SRO, certain provisions of its amended and restated Certificate of Incorporation and amended and restated Bylaws are rules of the Exchanges⁵² if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of the Exchanges, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the Exchanges have filed the proposed changes to the ICE Certificate and the ICE Bylaws with the Commission.

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.⁵³ Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,⁵⁴ which, among other things, requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The proposed

⁵² See 15 U.S.C. 78c(a)(27). If ICE decides to amend or repeal any provision of the ICE Certificate or ICE Bylaws, ICE must submit such amendment or repeal to the Board of Directors of each Exchange, and if any or all of such Boards of Directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. See Article X, ICE Certificate and Section 11.3, ICE Bylaws, with proposed revisions.

⁵³ In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁴ 15 U.S.C. 78f(b)(1).

rule changes also are consistent with Section 6(b)(5) of the Act,⁵⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchanges propose to amend various provisions of the ICE Certificate and ICE Bylaws to replace references to the defined term “U.S. Regulated Subsidiaries” with the term “Exchange,” which would be defined as a national securities exchange registered under Section 6 of the Exchange Act⁵⁶ that is directly or indirectly controlled by ICE, and to delete references to other subsidiaries of ICE that are not Exchanges. The Exchanges also propose to replace references in the ICE Certificate and ICE Bylaws to ICE Holdings, NYSE Holdings and NYSE Group with the defined term “Intermediate Holding Companies,” and to adopt a new definition of “Member” to be used in place of the list of categories of members and permit holders that are specific to each Exchange and are listed in the ICE Certificate. The Exchanges also propose to delete obsolete references in the ICE Certificate and ICE Bylaws. The Commission believes that these amendments to the ICE Certificate and ICE Bylaws are consistent with Section 6(b)(1) of the Exchange Act, because the amendments clarify references in the ICE Certificate and ICE Bylaw to entities that are or control national securities exchanges. The proposed changes to the ICE Certificate also should simplify references in the ICE Certificate which apply to “Members” of a national securities exchange without any substantive change to the application of those

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78f.

provisions. The Commission also believes that it is appropriate for the Exchanges to delete obsolete or inaccurate references in the ICE Certificate and ICE Bylaws.

The Exchanges further propose to amend the ICE Bylaws provisions relating to the location of stockholder meetings; the quorum for stockholder meetings; the advance notice requirements for stockholder proposals brought forth at stockholder meetings; and to adopt the term “Proponent,” to refer to stockholders and nominees that propose to bring matters before the annual meeting of stockholders. The Commission believes that the amendments are consistent with the requirements of Section 6(b)(5) of the Act,⁵⁷ which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes clarify the rules applicable to shareholder meetings and the entities that can bring matters before an annual meeting of shareholders.

⁵⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR-NYSE-2017-13; SR-NYSEArca-2017-29; SR-NYSEMKT-2017-17; SR-NYSENAT-2017-01), as modified by Amendment No. 1 thereto, are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Eduardo A. Aleman
Assistant Secretary

⁵⁸ 17 CFR 200.30-3(a)(12).

